

**Testimony of James E. Rogers  
Vice Chairman, President, and Chief Executive Officer  
Cinergy Corp.**

**Before the U.S. House of Representatives  
Committee on Commerce  
Subcommittee on Energy and Power**

**Hearing on Electric Utility Industry Restructuring  
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Introduction

Chairman Bliley, Chairman Schaefer, and members of the subcommittee, good morning. My name is Jim Rogers, and I am vice chairman, president, and chief executive officer of Cinergy Corp. Thank you for inviting me to appear here in Richmond at this, your second field hearing on the benefits of electricity restructuring. As the first hearing in Atlanta demonstrated, it is important that the subcommittee hear from customers themselves just what they want out of a restructured electric industry. As a supplier, though, Cinergy also has an important message on the benefits that competition is bringing to customers. These hearings will provide the subcommittee with a foundation of evidence upon which a strong case for restructuring can be built, so that federal legislation can be enacted at the earliest possible opportunity.

I am pleased to have been invited back to discuss with the subcommittee the benefits of competition and the need for federal legislation. Less than a year ago, at one of the oversight hearings held by the subcommittee on this important matter, I was able to outline Cinergy's vision for a restructured electricity industry. A lot has happened since then. What began in the minds of some as an intellectual exercise has become an effort of serious policy reform and development, both at the state and federal level. Nearly every state has taken steps to begin addressing this issue, and companies and interest groups have joined together in a variety of coalitions representing all sides of the debate.

What else has happened? Industry trade publications report that merger mania has taken hold of the industry. Indeed, a number of electric utilities have announced plans to position themselves for a more competitive future by combining not just with other electric utilities but with gas pipelines and local distribution companies as well. The Federal Energy Regulatory Commission's (FERC) recently adopted merger policy guidelines were used for the first time to approve one such "convergence" deal. Even utilities that have not consummated or initiated deals are looking at ways to restructure their businesses internally to prepare for competition.

FERC has completed the rehearing process on its landmark Orders 888 and 889 on open transmission access. This process, and FERC's continuing effort and guidance regarding the creation of independent system operators to run the regional pieces of the nation's transmission grid, continue to stimulate the development of an ever more robust wholesale power market.

In the wake of all this activity, we are finding that there has never been a greater degree of consensus that customer choice can benefit all consumers. But some still question the need for federal legislation. Or, put another way, "Is federal legislation necessary to guarantee that all customers are given a choice of electricity suppliers?" Cinergy believes the answer is "YES." The states, laudable though their restructuring analyses and objectives may be, have produced widely different levels of results – from enacted legislation with fixed implementation dates on one side to merely the beginning of discussions about restructuring on the other. Action by Congress is necessary to produce some level of consistency and certainty as this effort goes forward.

### The Benefits of Competition

Before I get into the need for federal legislation on customer choice, it is probably useful to summarize just why customer choice should be pursued in the first place. The first point is fundamental – all customers should be able to choose their electricity supplier. It's simply the right thing to do. In today's financially and technologically evolving energy markets, is there a rational and compelling reason why governments should make the decision for customers as to which supplier they may purchase electricity from and at what

price? We have seen that competition in other industries brings lower prices, efficient and more innovative services, and more choices for customers – is there reason to believe that those same benefits would not come to electricity customers?

The second point is practical – embracing competition is simply good public policy. Competition works – it drives down prices and spurs innovation. Some estimate that the benefits to the U.S. economy that will result from lower electricity prices will exceed \$60 billion annually. This will occur not only through reductions in customer bills, but also through reductions in the costs of goods and services that have embedded into them the price of electricity. If the steel, aluminum, plastic, and rubber that go into auto parts are less expensive to produce, so will be the car. And just about any other product you can name. These are benefits with which everyone can identify. Simply put, a free and competitive market can and will allocate society's resources more efficiently than governmental command and control – that is a bedrock principle of our American economic system.

#### The Need for Congress to Act

Cinergy believes that a comprehensive federal approach to retail customer choice and utility industry restructuring is not only desirable but necessary to avoid a “patchwork quilt” of state programs. Nearly every state in the Union is examining, at least in the broadest sense, the issue of whether and in what manner to implement customer choice in its own retail markets. Of interest to states that already have enacted customer choice, two premier questions that are likely to arise in the federal debate are those of reciprocity and “grandfathering” – will neighboring states be allowed to “play” and will the actions already taken by states be protected. Actions within Cinergy's own retail service territory are indicative of the variety of approaches to competition being taken by states that have not yet enacted new laws. In Ohio, the General Assembly has formed a bipartisan committee to study this issue and has stated its intention to release a report on customer choice legislation by the fall. Introduction and passage of a comprehensive bill is expected next year. In Indiana, with Cinergy's support, a customer choice bill was introduced this year, but the state's legislative effort has now been referred to a study committee. In Kentucky, the Commission and

certain stakeholders have expressed reservations about the benefits of retail competition in an already low-cost state. Thus, discussion of customer choice legislation there is very preliminary.

By contrast, states such as California, Massachusetts, New Hampshire, and Rhode Island are very far along in their move to retail competition. Pennsylvania, one of our neighboring states, passed legislation at the end of last year that initiates customer choice pilot programs this year and phases in full customer choice over the next several years.

Given the undeniable economic benefits resulting from replacing command and control regulation with competition and customer choice, can anyone seriously argue that we should await action by all of the states before this policy becomes the law of the land?

This is not an academic question. If consumers in any state are to enjoy the full benefits of competition, there will be a need for certain minimum uniform standards, or “rules of the road.” Standards to govern, for example, the open access operation of local distribution wires are necessary to ensure dependable, non-discriminatory production and delivery of electricity. Only Congress can do this.

It is neither illuminating nor even accurate for opponents of federal customer choice legislation to characterize the debate in terms of Washington infringing on the rights and powers of the states. Mr. Chairman, your legislation envisions the states exercising control over the local wires. They will have primary responsibility for universal service, the rights of local distribution customers, continuation of necessary programs for low-income customers, reliability standards, and codes of conduct. During the transition to competition, it will be the states who will determine the thorniest issue of them all – recovery of so-called “stranded costs.”

But electricity is an interstate commodity. Electrons know no state boundaries. Congress, with constitutional authority over interstate commerce, must ensure that all Americans have the opportunity to

share in the benefits that competition will bring. Only a federal bill with a framework for reform can do that.

In addition, there can be no legitimate policy-based argument for continued government regulation – whether federal or state – of aspects of the electricity business that are competitive. Generation is no longer a natural monopoly. It should be completely deregulated. Only Congress can do this in a comprehensive manner at the same time throughout the country.

Further, states rights cannot be an excuse for denying to any customer of electricity a choice of suppliers. This is not a matter of federal versus state authority. It is a question of individual rights versus government regulation; of the free market versus one controlled by regulators. Every state law that grants an exclusive franchise to a seller of electricity should be terminated on a date certain in the near future. Only Congress can do this in a manner that helps ensure fair and consistent treatment of stakeholders throughout the country.

And finally, only Congress can remove existing federal constraints to competition, including outdated statutes like the Public Utility Holding Company Act (PUHCA) and the Public Utility Regulatory Policies Act (PURPA). While both laws may have served useful purposes in the past, they are outdated and unnecessary in competitive markets and should be repealed as soon as possible.

Particular attention should be paid to PUHCA, the practical effects of which remain widely misunderstood despite its over 60 years of existence. In addition to its impacts on registered utility holding companies such as Cinergy, PUHCA imposes numerous regulatory obstacles which hamper the ability of other suppliers to compete fully and effectively in electricity markets. Although the Securities and Exchange Commission (SEC) has recommended conditional repeal of PUHCA and attempted to make the statute more responsive to the new competitive environment, the statute itself contains a number of features which inescapably frustrate genuine competition and which cannot be cured by rulemakings or other administrative action.

PUHCA affects not only utilities like Cinergy but also companies that are neither utilities nor utility holding companies. Many of you would be surprised to learn that PUHCA has any effect at all on these companies. The truth, however, is that PUHCA imposes sweeping limitations on how these companies can participate in markets for energy services. To understand the effects of PUHCA on these companies, you first must appreciate that they absolutely are unwilling to engage in any activity that might cause them to become ensnared in PUHCA's bizarre and burdensome tentacles. Thus, they will not be willing to become owners, or even operators, of any facilities that would cause them or any of their subsidiaries to be classified as utilities. Nor would they offer any services that might cause them to become utilities or utility holding companies. Thus, PUHCA actually provides an effective barrier to entry for non-utilities that may wish to become active in the evolving electricity business. Anyone wanting to increase the number of competitors should support repeal of PUHCA.

#### A Utility *for* Customer Choice

Not so very long ago, investor-owned electric utilities were viewed as a monolithic entity, happy with the status quo. But some, including Cinergy, have challenged that notion and continue to set themselves apart from those in our industry who spend a lot of energy and large sums of money opposing competition – both at the federal and state levels. Last June, Cinergy joined with other pro-competitive utilities and formed the Partnership for Customer Choice (PCC), which supports federal legislation requiring the states to provide customer choice by a date certain (December 2000). The PCC's membership now includes Allegheny Power, Cinergy, PacifiCorp, Pennsylvania Power & Light, Portland General Electric, UtiliCorp United, Wisconsin Energy, and Wisconsin Power & Light.

While other utilities and organizations avow their interest in “getting competition right” while at the same time questioning the benefits of customer choice, the PCC's members remain committed to enactment of federal customer choice legislation as soon as possible, consistent with our principles. These include a federal mandate for state action by December 2000; state authority over local distribution and reliability, consistent with the federal nondiscriminatory open-access standard; the development of independent

system operators or comparable mechanisms for enhanced market efficiency and regional coordination; and state authority for recovery of appropriate retail stranded costs that does not unduly impede the transition to competition. The PCC is working closely with Americans for Affordable Electricity (formerly known as the Umbrella Coalition), a diverse group of businesses, organizations, and consumer interests, to support Chairman Schaefer's efforts in these field hearings and other venues to bring the message of the benefits of customer choice to each American household.

#### Creating "New Traditions"

At Cinergy, we believe that calls for customer choice already have begun to transform the "traditional" utility industry of old into a new and exciting business constantly seeking new opportunities and innovations. Granted, only a few companies currently can be viewed as outside the traditional mold, but these numbers will increase as more and more states embrace customer choice and as utilities rise to the challenge of redefining themselves in order to survive in the brave new world of competition. Federal action, moreover, would spur this transition – another excellent reason for Congress to act now.

But it hasn't just been official governmental action that has moved the ball inexorably toward competition. It's customer demand. Customers today are smarter and more sophisticated than ever. We see it every day. They know as much about our business as we do and they aren't afraid to say so. They are avid students of our changing business and are rapidly becoming expert kilowatt shoppers.

And we're becoming more skilled kilowatt marketers. As the transmission grid has opened up, the wholesale power business has exploded. Cinergy's bulk power traders are making deals all the time, selling and buying wholesale power for delivery from California to New England. Of local interest, Cinergy just last month was selected by the Blue Ridge Power Agency as the recommended supplier of wholesale electric power to five of its members for a seven-year period beginning July 1, 1998. Under the agreement, Cinergy will be providing full electric requirements to approximately 70,000 Virginians in Bedford, Danville, Martinsville, Richlands, and Salem – locales currently served by AEP-Virginia. This

announcement comes on the heels of our February agreement to provide 140 mw of bulk power to the city of Bristol, Virginia – currently served by TVA – beginning in January 1998.

On the retail side of the business, thanks to customer choice pilot programs, Cinergy no longer is limited by its traditional service territory composed of portions of Indiana, Kentucky, and Ohio. We are participating in retail programs in New Hampshire, Illinois, Massachusetts, New York, Idaho, and Washington, with customers ranging from Walmart to the U.S. Military Academy at West Point.

Cinergy is just one example of how the utility industry is changing. In the not-too-distant future, the only place you are likely to find a vertically integrated utility company providing electric service to captive customers is in some foreign country that has yet to get the message about competition. Internally, Cinergy has divided into business units – the first step in reconfiguring our business from a “coal pile to the light plug “ industry to separate functions which customers will, in the future, be able to mix and match with our competitors’ services. In the United States, the word “utility” will take on a whole new and much more limited definition – the operation of interstate transmission and local distribution lines as common carrier transporters of electrons. This part of the electric industry will look very much like it does today. That is, the FERC will regulate interstate transmission and state commissions will regulate local distribution.

However, unlike today, interstate transmission systems will be controlled by entities who are independent of those who actually own the wires. These independent system operators will have no proprietary interest in generation or sales in the region where they control the interstate grid. This will ensure that the grid is being operated in a non-biased manner. Cinergy was an early advocate and a leader in promoting the ISO concept and a founding member of the proposed Midwest ISO.

How many ISO regions will there be? I don’t know. No one does. The marketplace - which means primarily the customers - will decide. In my view, Congress ought to guarantee the neutrality of the wires by requiring the establishment of ISOs. Then they and the regulators ought to sit back and let them form based on what the customer wants and needs.



However, it is critical that Congress establish uniform open access standards throughout the country. Only with uniformity will all customers, no matter where they live, have fair and equal recourse to the interstate markets in electric energy. Of equal importance, all those who do business on the supply side will be able to penetrate any market where there are purchasers who are looking for a better deal. Last year, FERC took a major step forward on the wholesale side with its landmark Orders 888 and 889, but more needs to be done on the retail side. Uniform open access standards for retail markets will create the most robust competition possible.

#### Serving Customers in a Competitive Marketplace

The operation of transmission and distribution lines on a common carrier basis will provide the structural foundation for a fully competitive marketplace in electricity, as well as in related customer-oriented goods and services.

In the fully competitive electricity marketplace, anyone will be able to build a power plant, and sell the power to anyone at a price established by the competition among sellers of electric energy for the patronage of customers. Thus, in the future, customers -- not politicians, bureaucrats, or corporate executives -- will establish the price for electricity.

Getting government regulators out of the business of deciding what power plants are built, and when, and by whom, will be a great boon to consumers and to the public interest. I have great faith in the American marketplace and firmly believe that, if you can get command and control out of the generation business, you'll quickly build a more efficient market that is driven by the desire of the customer to purchase a better product at a reasonable price.

The competitive marketplace also will provide a spark for the development of new and improved electric technologies. In my view, the current regulatory regime has been an impediment to new technologies. After all, if you're a monopoly and you think you're always going to be a monopoly, you tend to be less

interested in seeing if there's a way to do things better. It's the desire or the need to improve efficiency that's the hallmark of a competitive market.

Watch and see what new technologies develop and go to market as the customer takes charge. Fuel cells, for example, offer an exciting alternative to traditional generation and provide a good example of the many technologies that offer benefits to the environment, providing high-quality power safely, reliably, and efficiently, with minimal heat, emissions, and noise. Cinergy is licensing a 3kw hydrogen fuel cell for installation and testing at the Crane Division of the Naval Surface Warfare Center, and is proposing a larger scale demonstration to further explore the potential for future power applications of this exciting technology.

Cinergy also has entered into a joint venture with Trigen Energy Corporation to offer large customers – both inside and outside our existing service territory – advanced cogeneration and trigeneration technologies. The first project of this joint venture went operational within the past two weeks, when a new water chiller plant in downtown Cincinnati began pumping 7500 tons of cooling to 10 buildings. The system eventually is scheduled to double its capacity and replaces traditional air conditioning equipment that is becoming outmoded because of the harmful environmental effects of its refrigerants.

As I stated previously, already a thriving business in buying and re-selling power generated by others is emerging. Indeed, the number of marketers and brokers in the competitive wholesale markets already has grown dramatically. The opening of retail markets will witness an explosion of growth in this sector of the supply side.

Electricity providers – including generators, marketers, and brokers – will compete for the patronage of all customers. Many of these customers will be companies that have a great deal of experience negotiating energy supply agreements. However, the largest segment of the market is, and always will be, residential customers. Some argue that residential customers are not capable of protecting their interests by shopping for electricity. I strongly disagree. Consumers in every other sector of the American economy demonstrate

their bargaining acumen every day. There is no reason to suppose that the electricity marketplace will be any different.

Still, some customers simply will not want to be bothered. For customers who will not be active on their own behalf there will be no shortage of companies that will provide purchasing services for them. These companies will aggregate large numbers of such customers to increase their bargaining power. This segment of the retail market will be very substantial – much too substantial not to attract the attention of many providers of electricity. In other words, the competition on the supply side for this end of the demand side will be intense, and this will enable customers to obtain electricity at very attractive prices.

Another part of the industry will specialize in catering to the needs and desires of customers for a host of services, many of which have yet to be invented. These services, moreover, will not be limited, or even related to, electricity. The only thing they will have in common is that they will make life easier and more comfortable for all of us. For example, even five years ago, no one could have imagined that the wide array of telecommunications technologies that we currently use would even be available today, let alone in the homes and hands of so many consumers.

This competitive marketplace for electricity will be rough and tumble. It will be an exciting business to be in. But, above and beyond anything else, in the competitive marketplace for electricity, the customer will rule.

### Conclusion

The points that I have outlined to the subcommittee point to an electricity industry that is changing rapidly. Actions that today are viewed as “out there” and unconventional will not be viewed in the same light within the next ten years, in our view. As Congress and the states act to open up customer choice to everyone, more “traditional” utilities will transform into leaner, more nimble organizations that are ready to meet the challenges of competition. Thus, what today are considered non-traditional actions will become the new traditions of the transformed electric business of tomorrow. Congress has a key role to play in making sure

that transformation is completed at the earliest possible opportunity. And we at Cinergy stand ready to assist in this endeavor. Thank you.

## **Summary of Testimony**

**James E. Rogers**  
**Vice Chairman, President, and Chief Executive Officer**  
**Cinergy Corp.**

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- Much has happened in the last year to advance the discussion of electricity restructuring, so that now there has never been a greater degree of consensus that customer choice can benefit all consumers.
- Even so, some still ask, “Is federal legislation necessary to guarantee that all customers are given a choice of electricity suppliers?” Cinergy believes the answer is “YES.”
- Customer choice should be pursued for two key reasons: (1) Fundamentally, all customers should be able to choose their electricity supplier. It’s simply the right thing to do. And (2) Practically, embracing competition is simply good public policy. Competition works – it drives down prices and spurs innovation.
- Congress needs to enact comprehensive federal customer choice legislation to avoid a “patchwork quilt” of state programs.
- It is not accurate for opponents of federal customer choice legislation to characterize the debate in terms of Washington infringing on the rights and powers of the states.
- Congress must act to remove existing federal constraints to competition, including outdated statutes like PURPA and especially PUHCA, which provides an effective barrier to entry for non-utilities that may wish to become active in the evolving electricity business.
- Cinergy is a founding member of the Partnership for Customer Choice, which is committed to enactment of federal customer choice legislation as soon as possible.
- As a result of evolving competition, the “traditional” utility industry is changing rapidly and entering into new and very different aspects of serving customers.
- Cinergy is expanding its wholesale service across the country, specifically to Virginia in 1998, and now serves retail customers in six states outside of our service territory through state pilot programs.
- The electricity business of tomorrow will serve customers in a competitive marketplace and will look very little like the utility industry of today.
- Actions by utilities that seem unconventional today will not be viewed in the same light within the next ten years, instead becoming “new traditions” of the transformed electricity business of tomorrow.